

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT LEMON,

Petitioner,

v.

Civil Action No. 5:07CV116
(STAMP)

WAYNE PHILLIPS, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On September 13, 2007, the petitioner filed an application for habeas corpus pursuant to 28 U.S.C. § 2241, seeking an order directing the Bureau of Prisons ("BOP") to transfer him to a Community Corrections Center ("CCC") for the last six months of his term of imprisonment. The petition was referred to United States Magistrate Judge John S. Kaull for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

Following an order directing the respondent to show cause, the respondent filed a motion to dismiss as moot. The petitioner filed objections to the respondent's motion. Upon review of the petition, motion and response, the magistrate judge issued a report and recommendation recommending that the petitioner's § 2241 petition be dismissed as moot. The magistrate judge informed the parties that if they objected to any portion of the report, they must file written objections within ten days after being served

with copies of the report. To date, no objections have been filed.¹

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because no objections were filed in this case, the report and recommendation of the magistrate judge will be reviewed for clear error.

Magistrate Judge Kaul recommends that the petitioner's § 2241 petition be dismissed as moot because the BOP in fact considered the five factors set forth in 18 U.S.C. § 3621(b) in making the petitioner's CCC referral recommendation. This Court finds no clear error in the recommendation of the magistrate judge. Inmates are not entitled to six months CCC placement, rather they are entitled to have their placement considered in accordance with the five factors enumerated in 18 U.S.C. § 3621(b). See Jaworski v.

¹On April 22, 2008, the report and recommendation mailed to the petitioner by the Clerk was returned as undeliverable. In the Notice of General Guidelines for Appearing Pro Se in Federal Court, provided to the petitioner on September 13, 2007, the petitioner was advised that he must keep the Court and opposing counsel advised of his most current address at all times and that failure to do so may result in the action being dismissed without prejudice.

Gutierrez, No. 5:06CV157 (N.D. W. Va. Aug. 23, 2007)). In this case, the petitioner's case manager has averred, in a declaration attached as Exhibit 1 to the respondent's motion to dismiss, that BOP staff utilized the five factors enumerated in 18 U.S.C. § 3621(b) with regard to the petitioner's referral. The petitioner has not come forth with any credible evidence to refute this declaration. Therefore, because the necessary five factors were considered, the petitioner has received all manner of relief to which he is entitled.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The respondent's motion to dismiss as moot is GRANTED, and the petitioner's § 2241 petition is DISMISSED AS MOOT. It is ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court. Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the petitioner's failure to object to the magistrate judge's proposed findings and recommendation bars the petitioner from appealing the judgment of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 13, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE